

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 95-835-C - ORDER NO. 1999-111  
FEBRUARY 10, 1999

IN RE: Request of AT&T Communications of the	)	ORDER REQUIRING	✓ <i>me</i>
Southern States, Inc. to Implement 1+ and 0+	)	IMPLEMENTATION OF	
IntraLATA Presubscription for IntraLATA	)	DIALING PARITY BY	
Toll Service.	)	BELLSOUTH	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Motion of AT&T Communications of the Southern States, Inc. (AT&T) that we order implementation of 1+ and 0+ presubscription by BellSouth Telecommunications, Inc. (BellSouth) for intraLATA toll services in South Carolina by February 8, 1999. We then set a hearing on this Motion.

The hearing was held on January 21, 1999 in the offices of the Commission, with the Honorable Philip T. Bradley, Chairman, presiding. AT&T was represented by Francis P. Mood, Esquire, Roxanne Douglas, Esq. and Steve A. Matthews, Esq. AT&T presented the testimony of Richard Guepe. The Southeastern Competitive Carriers Association (SCCA) was represented by Frank R. Ellerbe, III, Esq. SCCA presented the testimony of Hamilton E. Russell, III. Sprint Communications Company (Sprint) was represented by Ben Fincher, Esq. and Darra Cothran, Esq. Sprint presented the testimony of Tony Key, who adopted the prefiled testimony of David E. Stahly. MCI WorldCom was represented by Frank R. Ellerbe, III, Esq. and Ken Woods, Esq. This Company presented no witnesses. BellSouth was represented by Caroline N. Watson, Esq., William F. Austin,

Esq., and William Ellenburg, Esq. BellSouth presented the testimony of Chris Boltz and Al Varner. Both the South Carolina Telephone Association (SCTA) and the South Carolina Telephone Coalition (SCTC) were represented by M. John Bowen, Jr., Esq. and Margaret M. Fox, Esq. SCTA presented no witnesses. SCTC presented the testimony of Steven Meltzer, who adopted the prefiled testimony of Emmanuel Staurulakis. The Consumer Advocate for the State of South Carolina (the Consumer Advocate) was represented by Elliott F. Elam, Jr., Esq. The Consumer Advocate presented no witnesses. The Commission Staff (the Staff) was represented by F. David Butler, General Counsel. The Staff presented the testimony of Gary E. Walsh. The Intervenor GTE South, Inc., United Telephone Company of the Carolinas, and the South Carolina Public Communications Association were not present at the hearing, nor were they represented by counsel.

Our Order No. 96-197 required all local exchange carriers, except for BellSouth, to implement intraLATA 1+ and 0+ presubscription, finding such presubscription to be in the public interest. That Order recognized the limitations of Section 271 (e)(2)(B) of the Telecommunications Act of 1996 (the Act), and held in abeyance any ruling as to the timing of implementation for BellSouth. We found that that section of the Act prohibited State Commissions from requiring Bell Operating Companies (BOCs) to implement intraLATA toll dialing parity until BellSouth entered the interLATA market or until 3 years had lapsed from the date of passage of the Act. AT&T through its Motion, and the testimony of its witness Richard Guepe, states that the three-year exception for BellSouth expires on February 8, 1999, and that there is no longer any limitation depriving

BellSouth's customers of the benefits being enjoyed by others. Guepe and others urge that South Carolina not wait to order 1+ and 0+ presubscription until BellSouth receives interLATA authority.

Guepe states that, without intraLATA toll dialing parity, South Carolina customers in BellSouth territory are forced to use BellSouth as their intraLATA toll carrier whenever they dial 1+, the area code, and the number called, in order to place their intraLATA toll calls. At present, the only way that BellSouth customers in South Carolina can use their intraLATA toll carrier of choice is to "dial around" BellSouth by dialing additional digits for every intraLATA toll call. Guepe believes that this "dial around" requirement constitutes a real and significant burden, which is a barrier to effective competition. AT&T also pointed out various states where intraLATA dialing parity has been ordered to be implemented by February 8, 1999. Guepe's positions are generally supported by witnesses for SECA and Sprint. SECA witness Hamilton E. Russell, III states that intraLATA dialing parity instituted by BellSouth will bring competitive pressures to bear on the market, resulting in lower prices for South Carolina's consumers. Tony Key of Sprint testified to the public interest aspect of intraLATA toll dialing parity. As Key states, this Commission has already found intraLATA dialing parity to be in the public interest in Order No. 96-167. Key agrees that the concept will promote increased competition in the intraLATA market.

Chris Boltz and Alphonso Varner testified for BellSouth. Boltz outlined what BellSouth has already done and what it needs to do to implement dialing parity. Varner opined that 1+ 0+ presubscription should not be implemented until BellSouth receives

interLATA authority. SCTC witness Stephen Meltzer outlined the issues that he believed should be addressed before implementation of intraLATA toll dialing parity by BellSouth. Among other subjects of the testimony were the possible termination of the Depooling Plan. Meltzer stated that SCTC member LEC's should not be required to become intraLATA toll providers in their service territories, and that if the Depooling Plan is terminated, BellSouth may very well determine that it is not in its financial interest to remain the toll provider of last resort in rural areas where it is not profitable to do so. Gary E. Walsh testified for the Commission Staff. Walsh opined that presubscription should not occur until this Commission has finalized the intrastate Universal Service Fund. Walsh also furnished a review of past Commission Orders related to this Docket.

It should be noted, however, that the United States Supreme Court decision issued on January 25, 1999, a date after the hearing, has settled the dialing parity issue as a matter of law. We take judicial notice of this opinion. This decision reversed the Eighth Circuit Court of Appeals decision on a number of issues, including the dialing parity issue. It appears to us that, in light of this Supreme Court opinion, BellSouth must implement dialing parity by February 8, 1999. A bit of historical perspective is helpful in explicating our reasoning in this matter.

The Telecommunications Act of 1996 (the Act), signed into law on February 8, 1996, fundamentally attempts to restructure the telecommunications industry, and to facilitate competition in the local telephone market. One of the requirements is that the local telephone companies provide dialing parity. Specifically, the Act directed the

Federal Communications Commission (FCC) within six months of the passage of the Act to “complete all actions necessary to establish regulations” to implement the requirements established in Section 251. Furthermore, with respect to dialing parity, Section 271(e)(2) of the Act provides that a state cannot order toll dialing parity before the Bell Operating Company (BOC) has been granted interLATA authority for services originating in that state or three years after passage of the Act, which is February 8, 1999. Sections 251 and 271 read in conjunction appear to require a BOC to implement toll dialing parity by February 8, 1999.

On August 8, 1996, as required by Congress, the FCC promulgated rules (FCC 96-333, Second Report and Order and Memorandum Opinion and Order) to implement certain parts of the Act, including the duty of the local telephone companies to provide dialing parity. Specifically, FCC Rule 47 CFR Section 51.211(a) required a local telephone company, such as BellSouth, that had not been given authority to begin providing interLATA service in a State before February 8, 1999, to implement dialing parity throughout that State by February 8, 1999 or an earlier date as the State may determine.

After the FCC issued these rules, various local telephone companies and state commissions filed court challenges across the country, all of which were consolidated subsequently in one Federal Appeals Court, the Eighth Circuit Court of Appeals. Thereafter, in a decision issued on August 22, 1997, that Court held that the FCC lacked jurisdiction to promulgate certain of these implementation rules, including the dialing parity rules. Subsequent to this decision, various parties appealed this decision to the

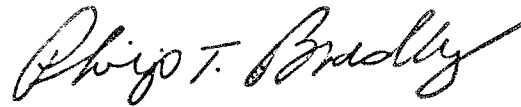
United States Supreme Court, including the rules pertaining to dialing parity. On January 25, 1999, the Supreme Court issued a decision reversing the Eighth Circuit Court of Appeals opinion on dialing parity, and held that the FCC did in fact have the authority to promulgate dialing parity regulations. Accordingly, the FCC's dialing parity rules have been reinstated. Therefore, BellSouth is required to implement intraLATA toll dialing parity effective on February 8, 1999.

With regard to implementation of cost recovery, we hereby approve the settlement reached between BellSouth and AT&T as the Commission ordered implementation plan. This settlement reflects implementation cost recovery over intrastate access minutes of use. In addition customers will be given a period of ninety days within which to make one change of their intraLATA carrier at no cost to the customer. Costs associated with this waiver will be recovered through the general cost recovery plan.

In addition, the Commission continues in its belief that customers of rural telephone companies should not be harmed. The Commission believes that it addressed and resolved the concerns expressed by the South Carolina Telephone Coalition in our Order No. 96-234. We hereby reaffirm the principles enunciated in that Order with regard to rural LEC's.

This Order shall remain in full force and effect until further Order of the  
Commission.

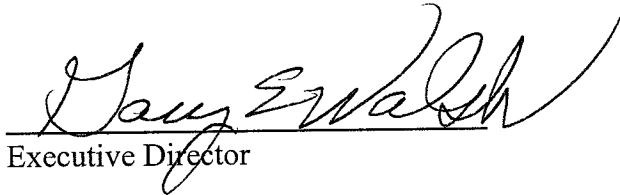
BY ORDER OF THE COMMISSION:



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Chairman

ATTEST:

  
Executive Director

(SEAL)